

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL CRISTNER,

Defendant-Appellant.

UNPUBLISHED
October 27, 2000

No. 219895
St. Clair Circuit Court
LC No. 98-003311-FH

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of three counts of criminal sexual conduct in the second-degree (CSC II), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with three counts of CSC II, the complainant being his eight-year-old daughter. It was alleged that complainant manually stimulated defendant's genitals, and that defendant ejaculated as a result. Prior to trial, defendant moved to admit evidence showing prior sexual conduct between complainant and her half-brothers. Defendant indicated that the evidence would show the source of complainant's age-inappropriate sexual knowledge. The trial court denied the motion without holding an in camera hearing.

The jury found defendant guilty as charged. The court sentenced defendant as a second habitual offender to concurrent terms of five to fifteen years in prison.

Generally, the rape shield statute, MCL 750.520j; MSA 28.788(10), precludes evidence of a sexual assault victim's prior sexual conduct with persons other than the defendant. If the defendant seeks to admit evidence of prior sexual conduct to show that a child's age-inappropriate sexual knowledge was learned not from sexual contact with the defendant but from criminal sexual conduct by another person, the defendant must establish that the sexual conduct of which he or she is accused is highly similar to that charged against the other person. The defendant must make an offer of proof regarding the proposed evidence and demonstrate its relevance. If the defendant meets that burden, the trial court must then hold an in camera hearing to determine if the evidence is relevant, whether the other

person was convicted of criminal sexual conduct involving complainant, and whether the facts underlying the previous incident are sufficiently identical to be relevant to the current proceeding. *People v Morse*, 231 Mich App 424, 433-434, 437; 586 NW2d 555 (1998). The determination of the admissibility of evidence is within the discretion of the trial court. *People v Hackett*, 421 Mich 338, 349; 365 NW2d 120 (1984).

Defendant argues that the trial court abused its discretion by denying his motion to admit evidence of complainant's sexual conduct with her half-brothers. We disagree and affirm defendant's convictions. Although the accusations against defendant concerned only sexual contact, defendant sought to introduce evidence of prior conduct consisting of penetration. The conduct of which defendant was accused was not highly similar to that sought to be introduced. Furthermore, defendant's assertion that complainant's conduct with her half-brothers likely involved manual genital stimulation or ejaculation was based entirely on speculation. Defendant's assertion that he was not allowed to investigate the alleged prior conduct involving complainant's half-brothers is unsubstantiated. Defendant did not make an offer of proof sufficient to warrant further consideration of the matter in an in camera hearing. *Morse, supra*. The trial court's ruling was correct.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage